



Commonwealth of Massachusetts State Ethics Commission

One Ashburton Place, Room 619, Boston, MA, 02108
phone: 617-371-9500, fax: 617-723-5851



SUFFOLK, ss

COMMISSION ADJUDICATORY
DOCKET NO. 06-0013

IN THE MATTER
OF
ROBERT NELSON

DISPOSITION AGREEMENT

The State Ethics Commission and Robert Nelson enter into this Disposition Agreement pursuant to Section 5 of the Commission's *Enforcement Procedures*. This Agreement constitutes a consented-to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, §4(j).

On May 11, 2006, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict-of-interest law, G.L. c. 268A, by Nelson. The Commission has concluded its inquiry and, on July 25, 2006, found reasonable cause to believe that Nelson violated G.L. c. 268A.

The Commission and Nelson now agree to the following findings of fact and conclusions of law:

Findings of Fact

1. During the time relevant, Nelson was a member of the Dunstable Board of Selectmen ("BOS"). The BOS is a three member board.
 2. Nelson had a purchase and sales agreement with Dracut-based developer Frank Gorman to sell to Gorman 3.5 acres of land in Dunstable on which Gorman planned to construct a 30-unit affordable housing apartment building under c. 40B guidelines (the "Gorman project"). The sale was contingent on Gorman obtaining a Chapter 40B comprehensive permit from the town.
 3. Chapter 40B is a state statute enacted to encourage the construction of affordable housing in all the cities and towns throughout the Commonwealth by reducing restrictions created by local approval processes. The state standard is for communities to provide a minimum of 10% of their housing inventory as affordable. In communities that do not meet that minimum, a developer may, if the project is rejected by the local board of appeals, appeal to the state Housing Appeals Committee, which can grant the permit. Communities exceeding the 10% threshold can accept 40B development proposals at their discretion.
- A developer acting under 40B notifies the town that its proposed development qualifies under either a state/federal subsidy program or through a partnership with the town in a Local Initiative Program (LIP). An LIP is an affordable housing development that is endorsed by the local municipality. Typically these are developments where the developer has approached the local municipality in a cooperative manner to gain approval of an LIP designation. For the towns it requires a vote of approval by the selectmen and a submission by the selectmen of an LIP application to the state Department of Housing and Community Development. Upon submission of the LIP application by the selectmen, the developer then submits its formal 40B application to the local ZBA. If the ZBA were to reject the LIP, the developer

can still appeal to the state Housing Appeals Committee, assuming the town does not meet the 10% affordable housing minimum.

4. The Town of Dunstable has not met the 10% affordable housing minimum.
5. Gorman opted to pursue the LIP approach for his project.
6. On July 26, 2004, the Gorman project was first presented to the BOS in the form of an LIP application.
7. Nelson abstained at BOS meetings from participating as a BOS member in matters regarding the Gorman project.
8. During the period of July 27, 2004 through August 4, 2004, however, Nelson participated as a selectman in discussing the project with other town officials via email.
9. In the email discussions involving the Gorman project, Nelson made the following recommendations: (1) that the 40B quotas not include accessory apartments; (2) that the fire department need not be involved at the concept phase but rather at the subsequent ZBA review; (3) that the ZBA (rather than the BOS) has the responsibility to review the proposal to ensure adherence to state and federal codes; and (4) suggested that a specific attorney with 40B experience represent the town's interests concerning the Gorman project.
10. On August 5, 2004, the BOS, after a review of the Gorman project with representatives of other town boards, voted 2-0-1 (with Nelson abstaining) to endorse the project.

Conclusions of Law

11. As a Dunstable selectman, Nelson was a municipal employee within the meaning of G.L. c. 268A.
12. Section 19 of G.L. c. 268A prohibits a municipal employee from participating as such an employee in a particular matter in which, to his knowledge, he has a financial interest.
13. The BOS decision whether to endorse the Gorman project as an LIP was a particular matter.¹
14. Nelson participated² as a selectman in this particular matter by making the above described recommendations via emails regarding the Gorman project. These recommendations had the potential to significantly impact the BOS's decision whether to approve the Gorman project as an LIP. Nelson was the owner of the property that was to be used in the Gorman project. Where the sale of Nelson's property was contingent on the Gorman project receiving a 40B comprehensive permit, and Gorman opted to pursue the LIP approach for his project which required BOS endorsement, Nelson had a financial interest in the BOS endorsement decision.
15. When he so participated in the particular matter, Nelson knew that he had a financial interest in the endorsement decision.
16. Therefore, by acting as described above, Nelson violated § 19.

Resolution

In view of the foregoing violations of G.L. c. 268A by Nelson, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Nelson:

- (1) that Nelson pay to the Commission the sum of two thousand dollars (\$2,000.00) as a civil penalty for repeatedly violating G. L. c. 268A § 19; and
- (2) that Nelson waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: July 27, 2006

¹ "Particular matter" means any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, but excluding enactment of general legislation by the general court and petitions of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties, finances and property. G.L. c. 268A, § 1(k).

² "Participate," participate in agency action or in a particular matter personally and substantially as a state, county or municipal employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise. G.L. c. 268A, § 1(j).